

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

KRYSTAL M. LINTON,)	
)	
Defendant Below/)	
Appellant,)	
)	
v.)	Cr. ID No. 0805013880
)	
STATE OF DELAWARE,)	
)	
Appellee.)	

ORDER

This 10th day of November, 2010, upon consideration of the Appellant's Appeal From the Decision of the Court of Common Pleas, it appears that:

1. The Appellant, Krystal M. Linton, entered a plea of guilty to Driving Under the Influence before the Court of Common Pleas on January 7, 2009. That same day, she was sentenced to 60 days at Level V, suspended for one year Level I probation. The Appellant was also ordered to take a substance abuse evaluation and complete a recommended substance abuse program. Lastly, the

Appellant was ordered to pay restitution in an amount to be determined. No date was specified as to when the amount due was to be determined.

2. On May 27, 2009, the Appellant was discharged from probation following the completion of the substance abuse program as directed. On November 9, 2009, she was ordered by the court to pay restitution in the amount of \$10,585. The Appellant filed a motion to vacate that aforementioned order on November 23, 2009. That motion was denied by the Court of Common Pleas on January 19, 2010.

3. The Appellant appealed the decision of the Court of Common Pleas on January 28, 2010. She contends that the Court of Common Pleas' jurisdiction over the matter was terminated when the Appellant was discharged from probation. As a result, that court lacked jurisdiction to order restitution and the order entered should be vacated as a result.

4. In reviewing appeals from the Court of Common Pleas, this Court sits as an intermediate appellate

court.¹ Its function is to correct errors of law and to review the factual findings of the court below to determine if they are sufficiently supported by the record and are the product of an orderly and logical deductive process.² Questions of law are reviewed *de novo*.³ Lastly, this Court cannot make its own factual conclusions, weigh evidence or make credibility determinations.⁴

5. According to 11 Del. C. § 4101(b), immediately upon imposition by a court, “any sentence to pay a fine, costs, restitution, or all 3 . . . shall be a judgment against the convicted person for the full amount of the fine, costs, restitution, or all 3 assessed by the sentence.” Eleven Del. C. § 4106(b) directs that “the court shall determine the nature and amount of

¹ See e.g., *Baker v. Connell*, 488 A.2d 1303, 1309 (Del. 1985); *State v. Richards*, 1998 WL 732960, at *1 (Del. Super. May 28, 1998).

² *Guest v. State*, 2009 WL 2854670, at *1 (Del. Super. Sept. 4, 2009).

³ *Sutherland v. State*, 2006 WL 1680027 at *2 (Del. Super.).

⁴ *State v. Goodwin*, 2007 WL 2122142, at *2 (Del. Super. July 24, 2007) (citing *Johnson v. Chrysler*, 213 A.2d 64 (Del. 1965)).

restitution, if any, to be made to each victim . . . The offender shall be ordered to pay a fixed sum of restitution." Eleven *Del. C.* § 4302 governs probation, which is "the sentencing without imprisonment of an offender by judgment of the court following establishment of guilt, subject to the conditions imposed by the court."

6. The Code further provides, in § 4104(d), that "the court shall retain jurisdiction over the convicted person until any fine or restitution imposed shall have been paid in full." The clear language of the statute thus demonstrates that the General Assembly intended for courts to retain jurisdiction over a defendant so that persons entitled to restitution as a result of the defendant's conduct would receive it. The statute does not require that a court make any particular pronouncement in order to retain jurisdiction or define its length as long as the amount is ultimately fixed.

7. The above mentioned statutes make it apparent as a result that the Delaware Code contemplates a distinction between probation and restitution. It

treats them as separate processes that impose distinctly different obligations upon an individual convicted of a crime. They are not linked or connected directly or indirectly other than by their separate links to the Defendant and the crime committed.

8. The order entered by the Court of Common Pleas stated that restitution was ordered in an amount to be determined, implicitly retaining jurisdiction so that the court could assess the value of the restitution at a later date. As Sections 4101(b), 4104(d) and 4106(b) make clear, the imposition of restitution and probation constitute two separate judgments that are not dependent on each other. The Court of Common Pleas therefore properly retained jurisdiction over the Appellant at the time she was sentenced for purposes of determining the value of the restitution due. It did not lose the authority to fix the value of that restitution by discharging the Appellant from probation before it did so.

Based on the foregoing, the decision of the Court of Common Pleas, denying the Appellant's Motion to Vacate

the Restitution Order, was not contrary to applicable law and is hereby **affirmed** as a result.

IT IS SO ORDERED.

TOLIVER, JUDGE

oc: Prothonotary
Michael W. Modica, Esquire
Diana P. Abboud, Esquire
Investigative Services
File